

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 495 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAHENDRA J SHAH

Versus

STATE OF GUJARAT

Appearance:

MR GC RAY for Petitioner

Ms. B.R.Gajjar, Addl. PUBLIC PROSECUTOR for
the respondent no. 1.

MR KG SHETH for Respondent No. 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 24/10/97

ORAL JUDGEMENT

Rule. Learned Additional Public
Prosecutor waives service of Rule on behalf of the
respondent State. Learned advocate Mr. K.G.Sheth, waives
service of Rule on behalf of the respondent no. 2.

2. Mahendra J Shah has filed the present Revision Application against the order passed by the learned Judicial Magistrate, Court no. 4, Vadodara on 19th August, 1995.

3. One Vijay Anandrao Pawar had filed a criminal case against Devram alias Devendra Mangaji Mali and Ashokkumar Kashinath Parekh and others on the allegation that a carton containing yarn worth Rs. 8,02,000/- were entrusted for the purpose of delivering the same to DCW, but the said yarn was not delivered to the consignee and that there was a misappropriation of the said goods. The said complaint was a private complaint lodged by the complainant and the learned Judicial Magistrate directed investigation under section 156(3) of the Code of Criminal Procedure.

4. During the said investigation, the police were in a position to seize some empty cartons which were containing yarn -subject matter of misappropriation from the present applicant and cash amount of Rs. 1,43,624.82 ps. The said amount of Rs. 1,43,624.82 ps. was seized as the sale proceeds of misappropriated yarn. The present applicant had given an application before the learned Magistrate to release the said cash amount and the said claim of the applicant has been rejected. Therefore, the present application had earlier filed Criminal Revision Application No. 2877 of 1996. My learned predecessor has disposed of the said Revision Application by passing the following order:

"The present Criminal Revision Application requires to be disposed of for the reasons and in the manner indicated hereinafter.

The question debated before me was as to whether an amount of Rs.1,43,622.82 ps. recovered from the petitioner could be said to be the conversion of the Muddamal Filament Yarn. I do not express any opinion on this question because the same shall have to be answered and decided by the trial Court.

Without expressing any opinion upon the said question, the present petition is disposed of by directing the trial court to complete the trial within a period of four months hereof. It would be in the domain of the learned trial Magistrate to decide the question regarding the return of the Muddamal money to the appropriate party. If the proceedings are not decided in the above said

time-frame, it shall be the liberty of the petitioner to move the trial court or even this Court, once again, for the reliefs which have been prayed in the present Criminal Revision Application. The proceedings are disposed of accordingly. The writ of the present orders should go to the trial court forthwith. Notice shall stand discharged."

But it seems that inspite of the said direction by my learned predecessor, the learned Magistrate has not proceeded with the trial and has not complied with the direction given by this Court. Hence, the petitioner has come before this Court.

5. It is vehemently urged by the learned advocate for the petitioner that the yarn in question was purchased by him in open market and he had no knowledge that the said yarn was a misappropriated property. But there is no dispute of the fact that empty cartons which were seized from the possession of the present applicant were the cartons which were loaded with the yarn which were entrusted and which were the subject matter of the alleged misappropriation. At this stage, it would not be proper to express any opinion regarding the claim of the present applicant because that would cause prejudice to him and it will also have an influence on the learned Magistrate who has to try and decide the case. Therefore, I refrain from making any observations regarding correctness or otherwise of the claim of the present applicant. But in view of the above stated facts, that amount in question is seized as the amount of sale proceeds of the yarn which is the subject matter of the misappropriation, it would not be proper at this stage to return the said property to the present applicant. The attached Muddamal property is a cash amount and there is no question of any identification of the same and therefore, in these circumstances, I would only direct the learned Chief Judicial Magistrate to deposit the said cash amount in a nationalised bank in a fixed deposit for a period of six months and in case if there is any cause to extend the said period, he can extend it and ultimately after the end of the trial, as per the decision, the amount alongwith interest should be payable to the person to whom the amount is ordered to be returned. By following such a procedure, it could not be said that any loss is caused to anybody.

6. The learned advocate for the petitioner has urged before me that inspite of the direction of this Court to finish the trial within six months, the learned

Magistrate has not disposed of the said case. It is most unfortunate that the learned Chief Judicial Magistrate has not complied with the direction of this Court. It has been observed by the Supreme Court that failure to comply with the direction of Apex Court by the High Court, though they may not be called technically even subordinate courts, would amount to contempt of Court. Therefore, if the Magistrate or Judge of a Civil Court is not in a position to comply with the direction of the High Court to complete the trial of the matter within stipulated period as per the direction of the High Court, then it is expected of him to move the High Court to extend the period of completing the trial. But to sit over the matter and not to dispose of the matter as per the direction of the High Court would amount to disobedience of the direction of this Court. Therefore, it was necessary for the learned Chief Judicial Magistrate, if he was not in a position to comply with the direction of my learned predecessor to move this Court stating reasons for non-compliance of the direction of the Court and seek further extension of the period. He has failed to do so and this conduct of his is not at all justified.

7. From the arguments submitted by the learned advocates at the time of considering this revision, it seems that one of the accused, the driver of the truck is absconding since the year 1989 and that may be also the reason for not completing the trial. But if that was the case, then the Magistrate ought to have separated the trial of the absconding accused after taking necessary procedure of declaring him absconder and proceeding with the trial of the remaining accused. In case if there happened to be a sole accused who is absconding, even in that case, there is a specific procedure for recording evidence in case of an absconding accused and that procedure must be followed and the evidence must be recorded. In that case, after recording of the evidence, the case could be transferred to sine die list, but there is no sense in keeping the matter on the file unattended.

8. I therefore, hope that the learned Chief Judicial Magistrate will bear the above observations in mind and he would dispose of the trial of the said case within six months from the date of receipt of the writ of this order and should comply with the direction regarding keeping of the muddamal amount in a fixed deposit. I therefore, reject this Revision Application with the aforesaid directions. Rule is discharged.

....

***darji